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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10646066

Filing Date: 21 August 2003

Appellant(s): GOTTFURCHT, ELLIOT A.

**MAILED**

**AUG 20 2007**

**GROUP 3600**

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Jonathan S. Miller, Esq.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 13 June 2007 appealing from the Office action mailed 11 May 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection was correct at the time written. However, the objection to four claims under 37 CFR 1.75(c) has since been withdrawn.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

The following is a listing of the evidence (e.g., patents, publications, official notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Herz et al., US006571279B1, 27 May 2003

Szabo, US006868525B1, 15 March 2005

Official notice taken that the limitations of claims 121, 128, 145, 152, 169, 177, 194 and 202 were well known at the time of the instant invention.

### (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims. This is a verbatim copy of the one remaining ground of rejection as mailed on 11 May 2007.

### DETAILED ACTION

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 108-205 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US006571279B1) in view of Szabo (US006868525B1).
5. Herz et al. teaches (independent claims 108, 132, 156 and 181) a method, and a machine-readable medium containing said method, the method comprising:

receiving a plurality of bids to display advertising (col. 5 lines 15-30);  
ranking the plurality of bids based on at least one criterion (col. 11 lines 52-59, where selects the highest bidder reads on “ranking the plurality of bids”);  
displaying an advertisement associated with a highest ranked bid of the plurality of bids (col. 5 lines 30-34); and  
displaying content (information that a user requests and views) via an internet (web pages) that is associated with the advertisement (*product information*, col. 19 lines 1-18 and col. 26 lines 5-15).
6. Herz does not teach displaying through a hierarchical navigation interface having a plurality of increasingly specific hierarchical layers. Szabo teaches displaying through a hierarchical navigation interface having a plurality of increasingly specific hierarchical layers (col. 17 line 54 to col. 18 line 6, and col. 47 lines 37-65, incl. Fig. 9). Because Szabo et al. teaches that a hierarchical navigation search interface makes large quantities of information understandable (col. 3 lines 6-10 and 47-51, and col. 7 lines 31-

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35), and because Szabo et al. teaches that it is especially useful for targeted advertising (col. 18 lines 8-14), it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Szabo to those of Herz et al.

7. Szabo et al. also teaches that the plurality of bids is received in association with a keyword (col. 3 lines 17-35). Szabo et al. also teaches *hyperlinks* (col. 2 lines 56-58), which reads on formatting any one of the content or the advertisement for navigation with unique inputs.<sup>1</sup>
8. Herz et al. also teaches at the citations given above claims: 111, 135, 159 and 184 (inherently, since a “category” can be most anything); 115, 116, 139, 140; 163, 164, 188 and 18; 119, 120, 143, 144, 167, 168, 192 and 193; 122, 146, 170 and 195; 129, 153, 178 and 203; and 131, 155, 180 and 205.
9. Herz et al. also teaches claims: 109, 133, 157 and 182 (col. 6 lines 27, where profile maintenance is an accounting function); 110, 134, 158 and 183 (col. 29 lines 6-7); 118, 142, 166 and 191 (col. 18 line 3); and 130, 154, 179 and 204 (col. 11 lines 22-26).
10. Szabo also teaches at the citations given above claims: 113, 114, 127, 137, 138, 151, 161, 162, 176, 186, 187 and 201; 117, 141, 165 and 190; 122, 146, 170 and 195; 171 and 196; 123, 124, 147, 148, 172, 173, 197 and 198 (inherently, when there is one layer); and 125, 149, 174 and 199.
11. Szabo also teaches claims: 112, 136, 160 and 185 (col. 14 lines 55-58); and 126, 150, 175 and 200 (col. 45 lines 45-49).
12. Neither reference teaches displaying a report of aggregated user selections (claims 121, 145, 169 and 194)<sup>2</sup> nor receiving navigation input from a voice recognition system (claims 128, 152, 177 and 202). Official notice is taken (MPEP § 2144.03) that both displaying reports of targeting data and voice recognition inputs (by the blind, for example) were well known and therefore obvious at the time of the invention.

<sup>1</sup> A hyperlink anchor has a unique location, so activating it generates a unique input. A narrower meaning for “unique input” is disclosed at spec. para [0071], [0073] and [0094], but these examples do not rise to the level of a “clear definition” (MPEP § 2111.01), which is to say a definition that sets bounds on the meaning of the term. Hence the examiner is obligated to give “unique input” its broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111).

<sup>2</sup> Herz et al. does teach tracking viewing and purchasing history (col. 6 lines 17-23), which reads on tracking user navigation selection.

### (10) Response to Argument

#### **Rejection of claims 108-205 under 35 U.S.C. 103(a) as being unpatentable over Herz et al. in view of Szabo**

As a preliminary matter, appellant's "Overview of the Prior Art" (pp. 6-8) is highly selective and inaccurate. For example, appellant argues,

"Herz does not disclose a system where advertisements are presented in an interactive interface such as a navigation interface or a system that is capable of receiving or processing input from a user through a display of the system." (First sentence of first full para. on p. 7.)

Herz et al. does teach these features, as displaying ads on portable user terminal devices (col. 15 lines 55-65) and collecting purchase data from the user with a PDA (col. 23 lines 63-66 and col. 27 lines 32-33).

With respect to the rejection of independent ~~claims 166 and 181~~, appellant argues (pp. 8-9) that the cited reference does not teach "receiving a plurality of bids to display advertising in association with a keyword". The rejection (para. 7 above) cites 19 lines in Szabo (col. 3 lines 17-35) as the source of this teaching<sup>3</sup>. It does take a careful reading and a bit of logic, as follows, to understand the teaching therein:

(1) Szabo teaches that the relevance of results is related to the frequency or proximity of keywords:

"In response to the garbage problem, search engines have sought to develop unique proprietary approaches to gauging the relevance of results in relation to a user's query. ... The known techniques include counting the frequency or proximity of keywords, ..." (Szabo, col. 3 lines 17-19, 24 and 25)

(2) Szabo teaches that the relevance of results is related to an advertiser's willingness to bid the highest price:

"In response to the garbage problem, search engines have sought to develop unique proprietary approaches to gauging the relevance of results in relation to a user's

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<sup>3</sup> At the top of p. 9, appellant quotes the pertinent 19 lines, which begin with "In response to the garbage problem ...", but misspells "keywords" as "keyboards". Appellant's quote also includes the previous para. in Szabo, col. 3 lines 6-16, which was not cited in the rejection.

query. ... The known techniques include ... ranking relevance in certain cases according to advertiser's willingness to bid the highest price for good position within ranked lists." (Szabo, col. 3 lines 17-19, 24 and 32-35)

From (1) and (2), it follows that an advertiser's willingness to bid the highest price is related to the frequency or proximity of keywords<sup>4</sup>, which reads on "receiving a plurality of bids to display advertising in association with a keyword".

Appellant argues (pp. 8-12) that the combination of Herz et al. and Szabo is not proper. The rejection (para. 6) gives two justifications for combining the references. First, the combination of references is justified by the teaching in Szabo et al. that a hierarchical navigation search interface makes large quantities of information understandable. Appellant argues (p. 9-10) that that is insufficient because "the examiner has not shown that Herz, in any embodiment, attempts to provide large quantities of information to the user." However, Herz et al. does teach providing large quantities of information to the user:

"Indeed, the usefulness of the technology described herein is contingent upon the ability of the system to collect and compare data about many users and many target objects." (Herz et al., col. 8 lines 55-58, emphasis added.)

It would have been obvious to one of ordinary skill in the art that "many users and many target objects" could produce "the garbage problem" explicated by Szabo. Examples where hierarchical organization of voluminous user results would be advantageous include advertisers getting many hits when searching "a widely distributed database of user profiles" with a long list of attributes (Herz et al., col. 15 lines 38-47), and a user searching the web for various vendors at varying distances from a location (Herz et al., col. 25 lines 63-67 and col. 26 lines 5-15).

The second justification is that a hierarchical navigation interface is especially useful for targeted advertising (Szabo, col. 18 lines 8-14). Appellant argues (p. 10, first full para.) that the reference does not appear to teach any such thing. ("It is not clear in what manner this supports the Examiner's assertion that the hierarchical presentation of search results is advantageous for targeted advertising.")

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<sup>4</sup> If Y of a function of X, and Y is a function of Z, then X is a function of Z.

The examiner maintains that the following would be clear to one of ordinary skill in the art of electronic advertising. First, the reference (Szabo, col. 54 to col. 18 line 4) explains the concept of an “associated object”, meaning some object of a set associated as a child is to a parent-like “content object”. Then the reference teaches a graphic, hierarchical navigation interface from parent to child:

“Therefore, the present invention provides a graphic hyperlink hierarchy providing, with a display of a content object, a display of an associated object. (Szabo, col. 18 lines 4-6).

Finally, the reference teaches,

**“Preferably, the associated object is defined by a process of collaborative filtering. For example, the associated object may be an advertisement, offer of a product or service for sale, or a set of information. Preferably, an economic motivation is present for defining the associated object, for example, a sponsor or other party might seek, based on an identification or special characteristics of the user or the class of content, to communicate with the user.”** (Szabo, col. 18 lines 7-14, emphasis added.)

“Collaborative filtering” reads on targeting<sup>5</sup>. Hence, one of ordinary skill in the art would understand that Szabo teaches that a hierarchical navigation interface is especially useful for targeted advertising. Because ad targeting is central to Herz et al., this teaching would make it obvious to one of ordinary skill in the art to add the teachings of Szabo to those of Herz et al.

Appellant argues (pp. 10-11) that the teachings of Herz et al. and Szabo are not combinable, apparently because the appellant believes that Herz et al. does not teach receiving user input:

“The Appellant has not been able to discern any teaching of Herz indicating that the displays are capable of receiving user input. Further, the Appellant has not discerned any teaching indicating Herz is capable of processing user input or

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<sup>5</sup> “Collaborative filtering is a process that seeks to determine common habits for a group of individuals having a common characteristic. ... This collaborative filtering is preferably used in conjunction with a past history of the user himself, providing a powerful tool for predicting consumer behavior and preferences.” (Szabo, col. 16 lines 25-27 and 30-33)

transmitting it from an input device to a processor." (Brief p. 11, middle of first para., emphasis added.)

As a preliminary matter, the appellant's argument is perplexing because the claims are not limited to "displays capable of receiving user input". Claim 156 is limited to "receiving a plurality of bids", but not through a display. "Displays capable of receiving user input" suggests a touch screen, but there is no such limitation in any of the claims. Subordinate claims (e.g., 164 and 166) do add limitations to a user terminal with a display and common input devices, so it is assumed that appellant is arguing that Herz et al. is incompatible with these subordinate limitations. The appellant is wrong. Herz et al. teaches user input to devices having displays, including collecting purchase data from the user with a PDA (col. 23 lines 63-66 and col. 27 lines 32-33). In addition to the PDA, Herz et al. teaches many common display devices capable of receiving user input:

"The display device 107 can in fact be a component of the user terminal device U1-U3, such as the display on a hand-held computer, pager, cellular telephone and the like." (Herz et al., col. 7 lines 3-6)

Appellant's second allegation is also wrong. Herz et al. also does teach "processing user input or transmitting it from an input device to a processor":

"The location enhanced information delivery system **100** is comprised of clients, which are end-user *terminal devices U1-U3* with extremely limited data storage capacity and servers, which contain client, product, and multimedia information for the information display device 107 and in addition descriptive information (directory information, schedules, indices) for the multimedia information. Clients are assumed to be under customer physical control and the following description is for the example where the display device 107 comprises an element within the *user terminal device U1-U3*. The transmission of the display information to the *user terminal device* represents a data communication issue relating to the limited available bandwidth. Considerable data can be stored in memory at the uplink point in the system. The idea here is that the server site contains all of the information which the small-memory *user terminal devices U1-U3* might need. Without a hierarchical system architecture, the selectivity of the similarity algorithms do (sic) not offer any

statistical gain. The method to attack this problem is to allocate a portion of a data communication channel to the *user terminal device*." (Herz et al., col. 27 lines 32-56)

There is nothing to preclude the combination of Herz et al. and Szabo. Herz et al. teaches every feature of the instant invention except the hierarchical navigation interface, and Szabo teaches that. Both reference use similar computer technology. The results would be the ad delivery system of Herz et al. better able to handle large volumes of data with the hierarchical navigation interface of Szabo. In summary, it would have been obvious to combine Herz et al. and Szabo because they present familiar elements being combined by known methods that will yield predictable results (*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007)).

Appellant argues (pp. 12, center) that Herz et al. is not analogous art. This section introduces no new argument and appellant is wrong for the reasons given above. Furthermore, even a simple comparison of titles shows the similarity:

Title of the instant application: "Method to generate advertising revenue based on time and location";

Title of Herz et al.: "Location enhanced information delivery system".

Appellant argues (pp. 13-14), with respect to independent ~~claims 108 and 132~~, that the examiner has inappropriately interpreted "unique input" too broadly. Unless a term is given a "clear definition" in the specification (MPEP § 2111.01), the examiner is obligated to give claims their broadest reasonable interpretation, in light of the specification, and consistent with the interpretation that those skilled in the art would reach (MPEP § 2111). An inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" (MPEP § 2111.01.III). A "clear definition" must establish the metes and bounds of the terms. A clear definition must unambiguously establish what is and what is not included. A clear definition is indicated by a section labeled definitions, or by the use of phrases such as "by xxx we mean"; "xxx is defined as"; or "xxx includes, ... but does not include ...". An example does not constitute a "clear definition" beyond the scope of the example.

The instant application contains no such clear definition for the phrase "unique input". In the instant case, the examiner was required to give the term "unique input" its broadest

reasonable interpretation, which the examiner judged to an input from any unique element, including a unique hyperlink anchor. Appellant argues (top of p. 14) that a hyperlink does not even provide an “input”, but it is an input to the computer receiving the hyperlink transmission.

As noted in footnote 1 of the rejection, applicant does give a narrower meaning by example in the specification. (Essentially, a “unique input” is an input to the local computer from a unique button or key). But this example cannot rise to the level of a “clear definition” because it sets no metes and bounds on the meaning of the term “unique input”.

Appellant now argues that the examiner’s interpretation is “contrary to the plain meaning of the term and how one skilled in the art would understand it as used in the context of the claim.” (Brief p. 13, middle of bottom para.) Nothing could be further from the truth. “Unique input” is not a term of art, but simply the combination of two well-known words that mean what they say, an input unlike any other. That is the plain meaning. The examiner’s interpretation – an input from a unique element – is in fact closer to the plain meaning than the applicant’s preferred interpretation – an input to the local computer from a unique button or switch. The appellant could have claimed “an input to the local computer from a unique button or switch” or clearly defined this in the spec. to be the meaning of “unique input”. The appellant chose to do neither and is accordingly not now entitled to this narrower interpretation. The rejection of claims 108 and 132 should be affirmed.

For claims 157 and 182, 109 and 133, 158 and 183 and 110 and 134 (pp. 14-17 of the brief), appellant makes no new argument. Appellant argues that Herz et al. does not teach input “to the display” (e.g., “Thus, there is no teaching that the management of these profiles would be possible through the same navigation interface that would display the advertisement”. Brief p. 15, center of top para.) This is the argument that appellant makes on pp. 10-11 of the brief and is discussed on pp. 7-9 of this examiner’s answer.

For claims 160 and 185, 112 and 136 (pp. 17 and 18), appellant has misread the rejection (para. 11), which cites the pertinent teaching in Szabo at col. 14 lines 55-58, not at col. 45 lines 45-49.

**Claims 161 and 186, 113 and 137** (brief pp. 19 and 20) were rejected (para. 10) as taught by Szabo at the citations given in para. 6 or 7. The rejection depends on the meaning of “cell”, which is explained in para. [0057] of the spec. with reference to Fig. 8. The examiner interpreted “cell” to be a blocked-off division of the screen display. Szabo Fig. 9 then reads on the claims, where the outlined “Commercial Content Online” reads on a cell. Similarly, for **claims 165 and 190, 117 and 141** (brief pp. 22 and 23), Szabo Fig. 1A teaches “a plurality of cells corresponding to the primary navigation options”.

**Claims 163, 167, 188 and 192, 115, 119, 139 and 143, 168 and 193 and 120 and 124<sup>6</sup>** (pp. 20-22 and 23-24 of the brief) were rejected (para. 8) as taught by Herz et al. at the citations given in para. 5. Appellant argues, “The Appellant has reviewed Herz but has been unable to discern any part therein that describes an interface for a bidding process.” (Brief p. 21, lines 3-4.) The bidding process is cited in the rejection at col. 5, lines 15-30. The Web-based interface is taught at col. 15, lines 42-47, which was not cited in the rejection.

For **claims 169 and 194, 121 and 145** (pp. 25 and 26), appellant argues that the reporting limitation is typically associated (only) with spreadsheet applications. Tracking and reporting to advertisers is in fact common for future ad targeting.

For **claims 170 and 195, 122 and 146** (pp. 26 and 27), appellant argues that rejection is unclear as where the limitation, “reformatting content from a website to display through the navigation interface with the advertisement”, is taught. The rejection is unclear. The rejection (para. 8) cited the source as Herz et al., but is misclassified. Szabo (Fig. 1A) teaches displaying content through the navigation interface with the advertisement. That reads on “reformatting content from a website” when the source is an advertiser website (Herz et al., col. 15 lines 38-47).

For **claims 171 and 196** (pp. 27 and 28), appellant makes no new argument. Appellant repeats the “unique input” argument raised on brief pp. 13-14 and discussed on pp. 9-10 of this examiner’s answer.

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<sup>6</sup> The brief discussion (pp. 23-24) implies that claims 120, 144, 168 and 193 depend directly on the independent claims. They do not. They respectively depend on claims 119, 143, 167 and 192.

**Claims 172 and 197, 123 and 147, 173 and 198 and 124 and 148** (pp. 28-31 of the brief) were rejected as inherent when there is (only) one layer (para. 10 of the rejection). Appellant argues,

"Rather, Szabo generates a tree or taxonomical display of search results having a single layer or depth. Szabo, col. 21, l. 31 - col. 22, l. 2. Thus, bids cannot be made for a particular depth, much less a maximum depth, because only a single depth exists." (Brief p. 29, center of top para.)

This is wrong on both counts. First, Szabo teaches multiple layers, but they are called "levels" (col. 17 line 17). Second, of course bids can be made "for a particular depth" when there is only one depth: They can be made for the one depth, which is also the maximum depth.

**Claims 174 and 199, 125 and 149** (brief pp. 31-33) were rejected (para. 10) as taught by Szabo at the citations given in para. 6 or 7. The rejection depends on the meaning of "cell", which is explained in para. [0057] of the spec. with reference to Fig. 8. The examiner interpreted "cell" to be a blocked-off division of the screen display. Szabo Fig. 1E then reads on the claims, because the primary navigation option (e.g., "Financial") is not in a cell or matrix.

For **claims 175 and 200, 126 and 150** (pp. 33 and 34), appellant argues that the citation (Szabo, col. 45 lines 45-59)<sup>7</sup> does not teach an ad overlay. The teaching is to an "overlay" at col. 45 line 57, which is inherently an ad overlay when an ad is being displayed.

For **claims 177 and 202, 128 and 152** (pp. 34-36), appellant argues that the claimed voice recognition input is not necessary and therefore not obvious. As stated in para. 12 of the rejection, it is necessary and obvious if the user is blind.

**Claims 178 and 203, 129 and 153** (pp. 36 and 37) were rejected (para. 8) as taught by Herz et al. at the citations given in para. 5. Appellant argues that appellant has been unable to discern any part therein that teaches "receiving bids, advertisements and content over the internet from a remote machine." (Brief p. 36, bottom para.) The bidding process is cited in the rejection at col. 5, lines 15-30. Use of the Internet (the

<sup>7</sup> It is lines "45-59" as cited by the appellant on brief p. 33; the "45-49" in the rejection is a typo.

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Web) to receive ads and content is taught at col. 15, lines 42-47, which was not cited in the rejection.

For claims 179 and 204, 130 and 154 (pp. 37 and 38), appellant argues that the citation (Herz et al., col. 11 lines 22-26) does not teach the entire limitation, "bids corresponding to a fixed time slot". The teaching is to a fixed time slot; bidding (inherently for a time slot) is taught for the independent claim 156 (para. 5 of the rejection).

**Objection to Claims 111, 135, 159 and 183 as in Improper Dependent Form Based on 37 C.F.R. § 1.75(c)**

This objection has been withdrawn.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Donald L. Champagne  
Primary Examiner  
Art Unit 3622

DONALD L. CHAMPAGNE  
PRIMARY EXAMINER

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